Supreme Court, U.S.
FILED

NO. 981102 DEC 30 1998

In the Supreme Court of the United States

October Term, 1998

Judy M. DeBose,
Petitioner

v.

United States Department of The Army, MPW Stone, Secretary, and Togo D. West, Jr., Secretary,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Ermence DeBose-Parent
1523 Polymnia Street
New Orleans, Louisiana 70130
(504) 523-8136
Attorney For Petitioner

CORRECTED COPY

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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QUESTIONS PRESENTED

(1) Once the Plaintiff has established a prima facie case of racial discrimination, can a decision by the District Court on discriminatory employment practices be rendered, that is not erroneous or contrary to law, without ever reaching the question of whether the Plaintiff has demonstrated, by competent evidence, that the Defendant's non-discriminatory reason for her adverse employment action was a pretext?

(2) Whether a District Court's finding of no prohibited racial motivation sufficient to violate Title VII can be upheld where the court completley discounts the Plaintiff's testimony on the subject of racial animus but, does not discount the testimony of Plaintiff's white co-workers who clearly establishes, by a preponderance of the evidence, racial animus played a role in Plaintiff's supervisor's dealings with her and, establishes that racial animus had a determinative influence on Plaintiff's hostile work environment and subsequent wrongful discharge.

(3) Whether the finding of the District Court that the entire testimony of the Plaintiff regarding racial animus be held to be **completely** discounted and incredible, is clearly erroneous where the court bases its decision on the statements allegedly not being made before trial and because of the court's position that the statements were "not made in Plaintiff's presence."

PARTIES TO THE PROCEEDING

Plaintiff represented in this Brief is an African-American female who was once a federal employee with the Defendant, the Department of the Army who is the only Defendant remaining in this action. Proceedings against five (5) other Defendants, Colonel Richard V. Gorski, Colonel Michael Diffley, Lieutenant Colonel James Hall (all of the front office) Marvin T Huntsman, Comptroller and Carolyn P. Saporito, Chief Management Analysis Branch, all in their official capacities, were dismissed by the District Court and not challenged on appeal because the proper party to be named in the civil suit by a federal employee is the Department Head, leaving Defendant M.P.W. Stone, Secretary, (named in the first civil suit) and Togo D. West, Secretary, named in the second civil suit.

Defendant—Respondent is the Department of the Army

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II. The District Court's findings that no prohibited racial animus existed is clearly erroneous because she discounted Plaintiff's testimony as to Saporito making racial statements in her presence, but did not discount the testimony of Saporito's white subordinates that establish, by preponderance of the evidence, that Plaintiff's race played a role in Saporito's dealings with her and, established that Plaintiff's race had a determinative influence on Plaintiff's hostile work environment and subsequent wrongful discharge. Thus, the prohibited racial animus was established by Plaintiff through her co-workers' testimonies and the lower court's decision is erroneous and must be reversed...10,11

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PETITION

Judy M. DeBose petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit and the judgment and opinion of the United States District Court For the Eastern District of Louisiana.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit on the appeal and rehearing (97-31306) is reproduced at pages A1 - A5 of the Appendix and not reported. The opinion of the District Court (92-2774 CW, 94-0151) is reproduced at page A6 of the Appendix. The Report and Recommendation of the Magistrate recommending the dismissal of Plaintiff's claims, at her cost, is reproduced at pages A7 - A23 of the Appendix (cited hereinafter as the Magistrate's Report).

STATEMENT OF JURISDICTION

The Judgment of the Fifth Circuit on appeal was entered on July 24, 1998 and rehearing was denied October 1, 1998. This Court has jurisdiction under 28 U.S.C. Section 1254(1). Jurisdiction of the Fifth Circuit was proper pursuant to 28 U.S.C. Section 1291 and jurisdiction of the District Court was proper pursuant to 28 U.S.C. Section 1331 and Section 1343.

CONSTITUTIONAL PROVISION INVOLVED

This case involves a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2(a)(1) which provides, in pertinent part:

> "... it is an unlawful employment practice for an employer...to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin."

STATEMENT OF THE CASE

1. *Procedural History:*

On or about March 8, 1971, Plaintiff commenced employment with the Defendant, Department of the Army, United States Army Corps of Engineers, New Orleans District (Corps of Engineers), and remained continuously employed with the Defendant in various capacities, rising to the position of Finance and Accounting (F&A) Branch Chief. On or about May 5, 1989, Plaintiff began her employment as a Management Analyst, GS-343-11, in the Management Analysis Branch under the direct supervision of Carolyn Saporito, the discriminating supervisor, following a demotion from General Schedule Grade 12 (GS-12) to General Schedule Grade 11 (GS-11) and a transfer out of the F & A Branch. Prior to this time, Plaintiff's work record and performance had been exemplary.

On or about, December 2, 1991, Plaintiff filed an Equal Employment Opportunity (EEO) complaint and requested a hearing before the United States Army Civilian Appellate Review Agency (USACARA). The complaint charged both Carolyn Saporito and the Corps of Engineers with conduct constituting racial discrimination, satisfying the requirements of 42 U.S.C. Section 2000(e)(5) and 42 U.S.C. Section 1983. A Notice of Final Decision granting the Plaintiff thirty (30) days within which to file suit in the United States District Court was issued on July 15, 1992 and received on July 16, 1992. Civil action number 92-2774 was filed on August 17, 1992 naming Carolyn Saporito, Marvin Huntsman, Comptroller, Lieutenant Colonel James V. Hall, Colonel Michael Diffley, Colonel Richard v. Gorski and then Secretary of the Department of the Army, M.P.W. Stone with racial discrimination and requesting the removal of Carolyn Saporito, replacement of all loss sick and annual leave and compensatory damages. The same day the Agency was served with the Complaint, Carolyn Saporito requested the issuance of the Performance Improvement Plan (PIP) which was the basis for Plaintiff's removal in March, 1993.

After Plaintiff's removal from her position with the Corps of Engineers she filed an appeal of the decision before the Merit Systems Protection Board (MSPS). Plaintiff alleged that her discharge was based upon racial discrimination due to disability, retaliation for protected activities (filing EEO complaints and participating in discrimination based civil actions), and retaliation for whistle blowing activity as the basis for her removal, these charges satisfy the requirements of 42 U.S.C. Section 2000(e)(5). A Notice of Final Decision granting Plaintiff thirty (30) days in which to sue was issued on December 8, 1993 and received December 14,

1993. Civil action number 94-0151 was filed on January 13, 1994 naming Togo D. West, Secretary of the Department of the Army as Defendant charging discriminatory employment practices on the part of the Agency and requesting reinstatement and compensatory damages.

The non-jury trial of these consolidated suits was conducted before the Honorable Alma L. Chasez, United States Magistrate Judge. Plaintiff's claims of discrimination due to disability and for judgment prior to trial. The trial began on Monday, June 24, 1996 and concluded on Friday, June 28, 1996. The Magistrate Judge issued a Report and Recommendation, an entire year later, that Plaintiff's suit be dismissed with prejudice at her cost on June 23, 1997. Plaintiff timely filed her Objections to the Report and Recommendation on August 1, 1997. On December 2, 1997 the Honorable Marcel Livaudais, Jr. United States District Judge, issued a Ruling on Plaintiff's Objections to the Report and Recommendation and Final Judgment overruling the objections and dismissing Plaintiff's action at her cost. Plaintiff timely apppealed on February 18, 1998. On July 24, 1998, the Fifth Circuit Court of Appeals affirmed the lower court's decision and on October 1, 1998, the rehearing was denied. This Petition timely follows.

2. *Disposition of the Case in the District Court*

The Report and Recommendation issued by the Magistrate Judge held that Plaintiff failed to prove, by preponderance of the evidence, that racial animus played a "determinative role" in the adverse job action she sustained (Magistrate Report, App. p. A-15). The Magistrate Judge found that the hostile environment and harassment Plaintiff was subjected to, to be products of Saporito's management

style and were inflicted upon everyone equally and without regard to race. She also found that Plaintiff's testimony concerning racial remarks and comments made by Saporito were not credible. The basis for that finding was the Court's belief that "if in fact, [racial] statements were made, it would have been recounted initially and then often repeated, not recollected for the first time years after Plaintiff's discharge." (Magistrate's Report, App. p. A-15). In sum, the Magistrate Judge determined that the working environment that Plaintiff was subjected to was, in fact, hostile. However, she found that the hostility was not of a racial nature and not motivated by Plaintiff's race and, therefore, not in violation of the Title VII. (Magistrate Report, App. p. A-21). The Magistrate also found the reason of poor performance to be a legitimate non-discriminatory reason for Plaintiff's removal. (Magistrate Report, App. p. A-18). The District Court overruled Plaintiff's Objections to the Magistrate Report and adopted the Report and Recommendation. The Fifth Circuit Court of Appeals affirmed the District Court stating, in pertinent part, that "any employment action directed to DeBose by the Defendants was not motivated by racial animus. The Defendant articulated a legitimate, non-discriminatory reason for taking the challenged employment action." (App. p. A-5).

REASONS FOR GRANTING THE WRIT

I. The District Court and the Fifth Circuit Court of Appeals held that the Defendant articulated a legitimate, non-discriminatory reason for removing Plaintiff. However, neither the Magistrate for the District Court nor the Fifth Circuit Court of Appeals even addressed the question as to

whether Plaintiff had demonstrated, or had been afforded an opportunity to demonstrate, that the Defendant's reasons for her removal was a pretext for the intentional discrimination. Because the District Courts' decision did not encompass this important criteria, it is clearly erroneous and must be reversed.

In *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 36 L. Ed 2d. 668, 93 S.Ct. 1817 this Honorable Court held that once the Plaintiff establishes a prima facie case of racial discrimination, the burden shifts to the Defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action. If the Defendant can articulate such a reason, the Plaintiff is then entitled to a fair opportunity to prove that that reason was a pretextual cover-up for the racially discriminatory decision. *McDonnell Douglas* at 672.

If Plaintiff was afforded such an opportunity and, Plaintiff does not think she was, the record is still replete with evidence that is ample enough to show that the Agency's decision to remove her was pretextual. In determining the pretext of the employment decision, the courts have looked at several circumstantial factors, such as, the manipulation of the Plaintiff's job assignments, the discriminatory failure or refusal to provide adequate training and the subjective nature of the evaluation procedures used to render the adverse employment decision. Unlawful Employment Practice, 32 ALR Fed. 7 Section. 2.

Manipulation of Job Assignment

In the trial on the merits, both Ken Kanik (white subor-

dinate of Saporito) and Plaintiff testified as to how Carolyn Saporito deliberately changed the criteria for the first study assignment given to Plaintiff (the Boat Study) by taking the original request for the study and adding complicated portions that the original request did not ask for or need, such as how many boats the Agency owned, how many in each size and category and how much the agency paid to purchase each boat. Plaintiff also testified as to how Carolyn Saporito kept giving her performance improvement plans on the exact same studies, each time telling Plaintiff that something different was wrong with them.

Defendant's Discriminatory Refusal To Provide Adequate Training.

Plaintiff and Ken Kanik testified that Carolyn Saporito deliberately did not assist and, kept anyone else from assisting Plaintiff. They both testified as to how Saporito refused to send Plaintiff to appropriate training courses. Randy Florent and Ken Kanik testified as to Saporito's stating that Plaintiff did not have the skills to perform the job of a Management Analyst. The Magistrate mentioned in the Report how many hours of training Plaintiff had been given under Saporito's supervision. However, the Magistrate fails to state that the Defendant offered no evidence as to the training hours given Plaintiff's white counterparts thereby, failing to establish that those hours were adequate training for Plaintiff. Finally, the Magistrate stated that Plaintiff was not **denied** training. Plaintiff's claim has been, since the filing of her first EEO complaint, that she was not being properly, i.e., adequately trained to do her job.

The Subjective Nature of the Evaluation Procedures Used to Remove Plaintiff

All of the information contained in the PIP, as to the deficiencies in Plaintiff's work, were supplied by Saporito. The information concerning Plaintiff's performance deficiencies in the Proposed Removal submitted by Saporito was supplied by Saporito. No one else had any input as to Plaintiff's alleged "poor performances" except Saporito, whose view was obviously prejudicial.

The Magistrate held that because Plaintiff's removal was effectuated by James Joy, the Comptroller, after the death of Saporito, Plaintiff's removal was not racially motivated. The holding is clearly erroneous. James Joy was an accountant just as Plaintiff was and he knew less about doing studies than Plaintiff did. James Joy only sustained the decision and, according to testimony at trial, "the front office," (those guys named in Plaintiff's first suit filed August 17, 1992, Colonel Diffley and James V. Hall) pressured Joy into sustaining the decision in March, 1993.

None of the above-outlined testimony was refuted by Defendant at trial. In fact, no one who testified at trial on behalf of Defendant could testify first-hand, as to the quality, or lack therof, of Plaintiff's work. Everything relied upon to show Plaintiff's poor work performance was provided by the discriminating supervisor, Carolyn Saporito, who, at time of trial, had been dead three (3) and one-half (½) years. Even James Joy, who allegedly sustained the removal, was not produced for testimony at trial. He was out of the jurisdiction of the court and refused to come forward.

Through the testimonies at trial, Plaintiff provided ample circumstantial evidence to establish that the Agency's decision to remove her also was a mere pretext for their discrimination. However, Plaintiff also has shown, by circumstantial evidence, that no white employee was subjected to the level of harassment she was subjected to; no white employee was refused adequate training; no white employee's work was scrutinized to the degree her work was scrutinized. Plaintiff proved that, if she were not black, she would not have been subjected to that level of harassment or removed from her position. Therefore, the decision of the lower court is erroneous and must be reversed.

Disparate Treatment

The District Court, in dealing with the issue of disparate treatment simply stated that "the ultimate issue of motivation must be dealt with to answer the question of whetaher racial discrimination occurred" citing *Rhodes v. Guiberson Oil Tools,* 75 F. 3d. 989 (5th Cir. 1996) (Magistrate Report, App. p. A-22). However, the court went on to simply hold that Plaintiff had not established prohibited motivation. No reason was given.

If the District Court had indeed followed *Guiberson Oil,* it would have held that race did not have to be Defendant's sole reason for removing Plaintiff. All Plaintiff had to show was that her race played a role in Defendant's decision making process (Saporito) and her race had a determinative influence on the outcome. If Plaintiff had not been denied, by the Magistrate, the documents she requested during discovery regarding the Agency's statistics on disciplinary actions of all its employees, Plaintiff would have been able to show:

(1) That no white Branch Chief was demoted for as minor an infraction as the misuse of a Diner's Club Card under $500.00;

(2) That no white Branch Chief was re-assigned to a Branch where they were unqualified to work;

(3) That Blacks, overall, were and, probably still are, disciplined more harshly than whites and;

(4) No white employee at a GS-11 was denied adequate training to perform his or her job.

Because Plaintiff established a prima facie case and provided ample evidence to show that the Defendant's alleged non-discriminatory reason of poor work performance was pretextual for their intentional discrimination, the lower court was then permitted to **infer** the ultimate fact of intentional discrimination. *Guiberson*, at 997. Because the lower court failed to address Defendant's pretextuality, it could not reach the issue of the ultimate motivation and thus, reached an erroneous decision, which must be reversed.

II. The District Court's findings that no prohibited racial animus existed is clearly erroneous because she discounted Plaintiff's testimony as to Saporito making racial statements in her presence, but did not discount the testimony of Saporito's white subordinates that established, by a preponderance of the evidence, that Plaintiff's race played a role in Saporito's dealings with her and, established that Plaintiff's race had a determinative influence on Plaintiff's hostile work environment and subsequent wrongful discharge. Thus, the prohibited racial animus was establish-

ed by Plaintiff through her co-worker's testimonies and the lower court's decision is erroneous and must be reversed.

The evidence and testimony adduced at trial demonstrated that the discriminating supervisor (Carolyn Saporito) was a demanding supervisor that did not make the work environment difficult for all of the employees in her department. The testimony demonstrated that Saporito had made it known to her superiors and Plaintiff, prior to Plaintiff's transfer, that she did not want black employees in her Branch. The testimony also demonstrated that Saporito had engaged in a "racial remarks contest" (which she won) and engaged in open advocacy of avowed racist David Duke and what he intented to do to Blacks. It demonstrated that she had ridiculed the dress, speech and mannerisms of Black employees in the Crops of Engineers. Ken Kanik, one of Saporito's white subordinates, testified that he himself believed that everything Saporito did to Plaintiff was because she was black. John Knight, another white subordinate, testified that he believed that Saporito was a racist. In sum, the trial testimony established that Saporito held Blacks in low esteem, that she deemed them inferior to her simply because she was white and they were not.

The Defendant offered, as proof that Saporito was not racist, the testimony of two other white subordinates of Saporito; Vince Sulito, who other employees testified was Saporito's favorite whom she never harassed and, who himself testified at trial that he brought David Duke material to the office to discuss with Saporito. The other white subordinate did not work in the section while Plaintiff was there, Mike Dickman, and, he testified that he didn't like Saporito so he was not inclined to be paying attention to what she was saying when she wasn't discussing work. Because De-

fendant's witnesses did not discredit or negate the testimonies of Ken Kanik and John Knight, Plaintiff did, in fact, establish racial motivation on the part of Saporito sufficient to violate Title VII. The lower court's decision is clearly erroneous and must be reversed.

III. The District Court discounted Plaintiff's testimony and held that racial slurs were not used in her presence because Plaintiff testified to one racial statement that she had not mentioned prior to trial. This was the major basis for the court's finding of no racial animus. Because Plaintiff had, in fact, recounted all the other racial statements prior to trial in discovery responses and deposition (App. pp. A26 - A38) the lower court's decision is clearly erroneous and must be reversed.

The Court refused to give credence to Plaintiff's testimony concerning the use of racial slurs by Saporito because she recounted one of the slurs for the first time at trial. However, the use of racial slurs or comments directed at, or in the presence of, the Plaintiff is not a requirement. It has been established that harassment need not specifically refer to race in order to be the product of racial animus. *Witt v. Roadway Exp.*, 880 F. Supp. 1455 (D. Ken 1995).

In *Brown v. East Mississippi Elec. Power Ass'n*, 989 F. 2d 858 (5th Cir. 1993) the discriminating supervisor did not use racial slurs in the of the presence of the Plaintiff. In fact, the evidence demonstrated that "Pippen (the discriminating supervisor) was usually circumspect in using the term [nigger] when out of the presence of African-Americans [which] underscores that he knew it was insulting. Nonetheless, he

persisted in demeaning African-Americans by using it among whites. This is racism." *Id.* at 861. In addition, the Court found that "Pipper's racism infected the disciplinary decisions of which Brown complains." *Brown,* supra.

Plaintiff claimed that she was subjected to a hostile working environment and wrongful discharge. The Magistrate Judge recommended dismissal of Plaintiff's claim as to a hostile work environment because she did not believe that Saporito had used racial remarks in Plaintiff's presence and because she did not believe that the hostile work environment was **because of racial animus.** However, as demonstrated in *Brown* racial slurs need not be directed to, or used in the presence of, the Plaintiff. That they are used at all indicates racial prejudice. Furthermore, the hostile work environment need not exist solely because of racial animus. The applicable law requires only that the hostile environment exist because racial prejudice infects or influences the actions of the supervisor. *Brown*, supra.

The pertinent question, never addressed in the lower court, is: did racial prejudice play **any** part in the treatment Plaintiff was forced to endure and the decisions concerning her termination? The evidence adduced at trial indicates that the answer to both questions is yes. The judgment of the lower court is clearly erroneous and therefore must, be reversed.

CONCLUSION

Because every aspect of plaintiff's claims, based upon the evidence, was erroneously decided by the District Court, the Petition for Writ of Certiorari should be granted.

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ON REHEARING - FILED OCTOBER 1, 1998

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 97-31306

FILED

OCT 1 1998

JUDY M DEBOSE

Plaintiff - Appellant

v.

UNITED STATES DEPARTMENT OF THE ARMY; ET AL

Defendants

UNITED STATES DEPARTMENT OF THE ARMY, MPW Stone, Secretary, in his official capacity

Defendant - Appellee

JUDY M DEBOSE

Plaintiff - Appellant

v.

UNITED STATES DEPARTMENT OF THE ARMY, Togo D. West Jr, Secretary

Defendant - Appellee

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans

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ON SUGGESTION FOR REHEARING EN BANC

(Opinion 7/24/98, 5 Cir., _____, _____ F. 3d _____)

Before WISDOM, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:

(✓) Treating the Suggestion for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Suggestion for Rehearing En Banc is DENIED.

( ) Treating the Suggestion for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ John Minor Wisdom
UNITED STATES CIRCUIT JUDGE

REHG-6

APPENDIX B

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT FILED JULY 24, 1998

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 97-31306 **FILED**
Summary Calendar **JUL 24 1998**

JUDY M. DEBOSE,

Plaintiff-Appellant,

VERSUS

UNITED STATES DEPARTMENT OF THE ARMY; ET AL,
Defendants,

UNITED STATES DEPARTMENT OF THE ARMY, MPW Stone, Secretary, in his official capacity

Defendant-Appellee

JUDY M. DEBOSE,

Plaintiff-Appellant,

versus

UNITED STATES DEPARTMENT OF THE ARMY,
Togo D West, Jr. Secretary,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

(92-CV-2774-E)

Before WISDOM, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:*

Judy M. DeBose, an African American woman formerly employed by the New Orleans District of the Army Corps of Engineers, filed a suit against the United States Department of the Army in which she alleged that the defendant subjected her to several forms of unlawful employment discrimination. The magistrate judge entered partial summary judgment for the defendant on the ground that DeBose had failed to raise a genuine issue of material fact with respect to her retaliation and handicap discrimination claims. After conducting a bench trial, the magistrate dismissed Debose's remaining claims that she was subjected to a hostile work environment and wrongfully discharged on the basis of her race. The district court adopted the magistrate judge's factual findings and legal conclusions. DeBose timely filed a notice of appeal from this final judgment. We affirm.

We review *de novo* the magistrate judge's grant of partial summary judgment in the Army's favor.[2] We agree with the magistrate judge and the district court; DeBose's handicap discrimination and retaliation claims cannot survive the defendant's motion for summary judgment. DeBose simply did not raise a genuine issue of material fact as to whether the defendant discriminated against her solely on the basis

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* Under 5TH R. 47.5, the Court has determined that this opinion should not be published and is not precedent except in the limited circumstances set forth in 5TH CIR. R. 47.5.4.

2 *Armstrong v. City of Dallas*, 997 F.2d 62, 65 (5th Cir. 1993).

of her alleged physical impairments.[3] Neither did DeBose raise a genuine issue of material fact as to whether the defendant retaliated against her for filing a discrimination complaint. We are not persuaded that any adverse employment action she suffered was causally related to her decision to file a discrimination complaint.[4]

We review for clear error the district court's post-trial dismissal of DeBose's wrongful discharge and hostile work environment claims.[5] "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed."[6] The district court's findings are not clearly erroneous. The record amply supports both the magistrate judge's and the district court's conclusion that any employment action directed to DeBose by the defendant was not motivated by racial animus. The defendant articulated a legitimate, nondiscriminatory reason for taking the challenged employment action.[7]

AFFIRMED.

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[3] *See Leckelt v. Board of Commissioners of Hospital District No. 1*, 909 F.2d 820, 825 (5th Cir. 1990).

[4] *See Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 705 (5th Cir. 1997).

[5] *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1044 (n. 1) (5th Cir. 1998).

[6] *EEOC v. Clear Lake Dodge*, 60 F.3d 1146, 1151 (5th Cir. 1995).

[7] *See Grimes v. Texas Dep't of Mental Health and Mental Retardation, 102 F.3d 137, 140 (5th Cir. 1996).*

APPENDIX C

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA FILED - DECEMBER 2, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
DEC 02 1997

JUDY M. DeBOSE	CIVIL ACTION
versus	NO. 92-2774 c/w: 94-0151
U.S. DEPARTMENT OF THE ARMY, ET AL	SECTION: E/5

J U D G M E N T

Considering the record, the evidence, and the law,

IT IS ORDERED, ADJUDGED and DECREED that there be judgment herein in each of these civil actions in favor of defendants and against plaintiff, Judy M. DeBose, dismissing plaintiff's claims at her cost.

New Orleans, Louisiana, December 1, 1997.

/s/ Marcel Livaudais, Jr.

MARCEL LIVAUDAIS, JR.
Senior United States District Judge

DATE OF ENTRY
DEC 2 1997

APPENDIX D

REPORT AND RECOMMENDATION OF THE MAGISTRATE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA - FILED JUNE 25, 1997

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED
1997 JUN 24

JUDY M. DEBOSE	CIVIL ACTION
VERSUS	NUMBER: 92-2774 c/w 94-0151
TOGO D. WEST, JR., SECRETARY OF THE DEPARTMENT OF THE ARMY	SECTION: "E" (5)

REPORT AND RECOMMENDATION

Plaintiff in the above captioned matter, Judy M. Debose, has instituted suit herein against Togo D.West, Jr., Secretary of the Department of the Army. Debose, a black female, brought suit alleging a violation of her civil rights under Title VII of the Civil Rights Act of 1964. 42 U.S.C. §2000e *et seq.* and 42 U.S.C. §1918a. Plaintiff asserts that she was wrongfully discharged based upon her race and further claims a hostile

DATE OF ENTRY JUN 25 1997
DATE OF MAILING JUN 25 1997

working environment existed prior to that discharge. Certain other claims of discrimination were dismissed on a prior urged motion for summary judgment.

It is undisputed that plaintiff was at all relevant times employed as a Management Analyst GS 343-11 in the Management Analyst Branch of the Office of the Comptroller, New Orleans District of the Army Corps of Engineers. She had been employed at the New Orleans District for a twenty-two year period before her discharge. Plaintiff's first line supervisor was Carolyn Saporite, now deceased, a white female, who was the chief in the Management Analyst Branch at the New Orleans District of the Army Corps of Engineers from May 9, 1989 until Saporito's death on January 25, 1993. Saporito held management authority over the plaintiff James Joy, a white male, was Debose's second line supervisor.

Prior to coming under Saporito's supervision, Debose, herself, held supervisory authority. More specifically, she had been finance and accounting officer at a GS-12 level for some number of years. At that time, she had had five different male supervisors and experienced no problems in her dealings with them. However, part of Debose's responsibility as finance and accounting officer was to make sure that various expenditures undertaken by the district were conducted in accordance with Federal law and Army regulations. She was demoted from this position in 1989 in an adverse decision upheld by the Merit System Protection Board and transferred to the Management Analyst Branch under Carolyn Saporito's supervision.

Plaintiff had known and interacted with Saporito for

multiple years and, until her transfer to the Management Analyst Branch, had no problems with Saporito. As the court understands it, problems began in 1990 following a traffic accident in Mississippi in which Debose was injured on her way to a work related training course in Fort Lee, Virginia.

The issues which the court must decide are whether or not plaintiff has been discriminated against because of her race through undergoing a hostile work environment and then a wrongful discharge.

The court notes at the outset that Carolyn Saporito was a difficult supervisor at best. Many of the individuals giving testimony at trial testified to her harshness, even her unfairness in a supervisory capacity. Indeed she was heartily disliked by a large majority of her subordinates.

John Knight worked with Carolyn Saporito as a Management Analyst for an eighteen month pereiod prior to the time plaintiff was employed in that department. He testified to difficulty with Saporito and of his opinion that the Management Analyst Division was "not a good office". Knight further testified that Saporito tolerated, condoned, and participated in negative comments about other employees. He further stated that Saporito did not like the plaintiff and that she had voiced an opinion that plaintiff initially got her job because she was black but that she was incompetent. He further opined that Saporito was jealous of plaintiff because, prior to her demotion, Debose was a GS-13 and that Saporito, herself, was only a GS-12.

According to Knight's testimony, Saporito played favorites so to speak. He specifically testified that he had

heard Saporito, herself, make racial comments at different times and he personally believes race was a contributing factor in Saporito's derogatory comments toward Judy Debose.

Melvin Huntsman worked with the Department of the Army in New Orleans between October, 1989 and December, 1991. He was the Comptroller for the New Orleans District during that time period and as such knew and supervised Carolyn Saporito. Huntsman testified that Saporito had an authoritative "nit-picky" style and did not take suggestions well. He testified that she instituted a sign-in/sign-out log in order to keep more complete control over her employees, including Judy Debose and Ken Kanik, a white male. According to Huntsman, Saporito criticized plaintiff's work product.

Valerie Sanders, a black female, has worked at the Corps of Engineers from October, 1987 through and including the date of trial. She was initially hired as a GS-9 Management Analyst in the Manpower Branch. Saporito was her supervisor. At the time she was initially brought on, there were no other blacks in that branch.

Sanders testified that Saporito was cordial to her but that she was handled differently from white employees in the following fashion:

First, she recounted an unpleasantness with Saporito in December of 1987 when other employees were allowed to go to a funeral of a black employee but she was asked to remain in the office. The second incident of different treatment occurred in February of 1988 when she went on a trip to Indiana. In March of 1988, Saporito asked her for a docu-

ment known as a Trip Report. Sanders indicated that she did not know that she had to generate such a document and was surprised when she was asked for one. Thereafter, she did successfully complete the Trip Report.

The third instance of different treatment had to do with miscommunication between Saporito and herself. Saporito stated to Sanders that an employee who was leaving was doing so because of her. Later, Saporito denied making such a statement. Lastly, a problem arose with regrd to a survey in the spring of 1988 in which Sanders had taken part. The survey was given to Saporito and mailed to an office in Atlanta. Later, the package was returned because two items needed recalculation. Saporito told Sanders that the entire package was wrong when, in her opinion, minor items needed to be corrected.

Sanders stated that she was unaware whether other people had problems with Saporite or not. She felt that she was handled differently than whites in that Saporito did not come to her desk and talk with her during the day. Insofar as Judy Debose is concerned, Sanders testified that she heard Saporito yell at Debose on one occasion and that she never observed Saporito yell at white subordinates.

Ken Kanik, a while male, worked for the Corps of Engineers under Saporito while Debose was employed there. He disagreed with Saporito's management style and her exercise of supervisory power as well as decisions she made. He testified that Saporito had voiced an opinion that Debose should have been fired in 1989 instead of transferred from the Financial and Accounting Branch to her section. Further Kanik contends that Saporito stated in reference to Debose

"now they want me to fire her." Kanik further testified that Saporito did not like the speech or dress of black employees and criticized them in that regard. He further testified, however, that Saporito did have black friends; i.e., a black attorney with whom she worked well as well as a black housekeeper.

Kanik further testified that Debose had inadequate training to perform her job as a management analyst. Prior to that time, she had been an accountant. She had little experience writing and had difficulty in this area. When Debose asked for assistance from Saporito, Kanik testified that Saporito would belittle her and say "You're a GS-11 I won't do your work". According to Kanik, Saporito had told him that she intended to fire Debose for performance reasons. she told him to stay away from Debose and not to assist her. Kanik clearly felt that Saporito's attitude toward blacks influenced her and that she always criticized black employees, including those not under her supervision. He heard Saporito yell at plaintiff on many occasions. Kanik further testified that he is of the opinion that race had something to do with the motivation to fire plaintiff but thinks also that the front office wanted her out.

On cross-examination, Kanik acknowledged that he did not like Saporito and indeed had been the target of her wrath during the three to four years that he worked under her supervision. He further testified that Saporito made fun of other people besides blacks and that there existed a click of people around Saporito who experienced no problems with her. The clear implication, however, was that, if one were not in the click, one might expect difficulties. He acknowledged Saporito's friendship with Randy Florent, a black attorney

employed by the Corps.

Michael Dickman was a program analyst who worked under Saporito from 1984 to 1988. having been hired by her, he nevertheless described Saporito as nit-picky, austere, authoritative, moody, difficult, and nasty. He further stated that she gave minimal on-the-job training and did not want individuals to consult with co-workers about how to do things properly. Dickman further testified that Saporito talked about others in a belittling fashion; such as, being stupid or fat, and was critical of their clothing and speech patterns. He testified that he never heard Saporito use racial slurs. He further stated that Saporite did not like the use of improper grammar and further that she talked about white people who used what he described as "ninth ward" grammar.

Vince Salito was a management analyst hired by Saporito. He described her as strict, demanding, and detail oriented and as an individual who had problems with her employees. Saporito expected each analyst to do his or her own work and the office environment was tense and unpleasant. He testified that he did not hear Saporito make racial comments or jokes; however, other employees did.

Randy Florent, a black male and an attorney-at-law, testified that Saporito was a demanding supervisor. However, he considered himself a friend of Saporito dating back to 1984. Florent testified that he and Saporito spoke on the telephone four or five days a week, at which time they gossiped or talk about work-related issues. Florent testified that Saporito spoke of Judy Debose as friendly and helpful when she was supervisor of the Financial and Accounting Department. She further expressed concerns that Debose had no background

or perspective for work as a Management Analyst. She confided in Florent that she planned to train Judy to see if she could do the work but questioned Judy's ability to write in a job which demanded written communication. She pondered to Florent her belief that Debose should try to get a job as an accountant because this was her background and, at some point, stated to Florent that she did not think plaintiff could be a good analyst because she could not write and she did not have analytical skills. Saporito expressed frustration to him over plaintiff's performance.

Florent expressed his belief that Saporito was not a racist. She, in fact, asked him to handle her legal affairs prior to her death and he did so subsequent thereto.

Judy Debose, herself, testified that despite the fact that she had known and interacted with Saporito for many years, her problems did not begin until July, 1990, approximately one year after she was transferred into Saporito's department. In fact, initially, plaintiff testified that Saporito told her that the "front office wanted her fired but she [Saporito] would protect her because [plaintiff] was her friend." The first evidence of hostility and/or harassment contended by Debose arose with an automobile accident wherein she suffered a back injury in the summer of 1990. Debose contends that Saporito attempted to prevent her from collecting workman's compensation while she was out recuperating from her injury and placed plaintiff on A.W.O.L. for two days that were covered by her doctor's certificate. Debose ultimately got her compensation and, upon furnishing proper paperwork, the A.W.O.L. status was rescinded.

Next, Debose contends that she was harassed in March

of 1991 in that Saporito gave her two performance appraisals to sign. One was satisfactory and the other was unsatisfactory. Plaintiff refused to sign the unsatisfactory one telling Saporito that once she did so Saporito could have begun procedures to remove her from her job. Nothing further transpired on this issue.

Between March, 1991 and August, 1992, Debose contends that Saporito continuously harassed her by yelling and screaming at her and demeaning her in such a manner as to place her in fear of going to work and being alone in the office with Saporito. The evidence does not support this. Certainly there were instances of Saporito raising her voice but these were not continuous, everyday occurrences. During that same time, Saporito moved Debose's desk location and allegedly gave her performance standards so high that one error could have resulted in her removal from the job.

Further acts of harassment are alleged between February and June, 1992 when Saporito hired an independent audit agency to review three of plaintiff's studies. Those audits were critical of plaintiff's studies. Those audits were critical of plaintiff's work product. Additionally, Saporito refused to extend the time within which plaintiff had to take corrective action pursuant to a P.I.P. given to her in August, 1992 when plaintiff had an eye problem and had been instructed by her doctor to do light visual work.

The ultimate question which the court must decide is whether the plaintiff has proven by a preponderance of the evidence that racial animus played a determinative role in the adverse job action which she sustained. *Hazen Paper Co. v. Higgins,* 507 U.S. 604, 113 S.Ct. 1701, 123 L.Ed. 2d 338

1993). Unquestionably, plaintiff was terminated against her will and can minimally establish a *prima facie* case for discriminatory conduct. The agency must then come forward with a legitimate non-discriminatory reason for what transpired which causes the court to weigh the motivation for plaintiff's discharge. *McDonnell Douglas Corp. V. Green,* 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 668 (1973).

There is very little positive that can be said for the management style of Carolyn Saporite. In fact, one white employee so disliked her that he paid for his own airplane ticket from Europe to be present at trial and testify. Indeed, it appears very difficult to locate any subordinate employee who views her in a favorable light. that an atmosphere of terror existed in her department among her employees as a control mechanism by Saporito seems obvious. However, it would appear that she visited her wrath on all employees, black, white, male, and female, at one point in time.

In order to prevail under Title VII, the plaintiff must establish more than hostility, pettiness, authoritarianism, and unfairness, all of which she has **clearly** established. She must establish that the reason the aforementioned negative environment existed was because of racial animus on the part of the supervisory employee.

The court notes that plaintiff testified in court that racial remarks were made to her by Saporito. However, she failed earlier on in the process to make these same allegations. For example, plaintiff claims that Saporito told her that she was dumb, stupid and "lazy like most blacks" and that blacks "reminded her of pigs because when you did them something they squealed". Yet, the first time these specifics

statements were testified to was in court, despite ample pre-trial discovery and administrative hearings.

Additionally, plaintiff, at some point, wrote a letter to Congressman William Jefferson complaining about her treatment by the Corps of Engineers. At no point in her letter to Congressman Jefferson does she mention anything about racial slurs directed toward her by Saporito. On cross-examination, plaintiff advised that she had forgotten about the statement regarding "blacks being like pigs" until the day of her trial testimony and that she did not make earlier complaints about the racial motivation of Saporito because she did not understand what constituted a racial comment. The court believes that, if in fact, that statement were made, it would have been rcounted initially and then often repeated, not recollected for the first time years after plaintiff's discharge. The court completely discounts plaintiff's testimony on this issue.

The court does not condone Saporito's management style nor is the court particularly impressed with the fact that the Department of the Army allowed its employees to be handled in this fashion but the question for the undersigned is whether or not plaintiff's termination was motivated by racial concerns. The record taken as a whole does not establish by a preponderance of the evidence that this is the case. Saporito maintained appropriate relationships with black individuals such as Randy Florent and with Debose, herself, prior to her demotion. Her interaction with Valerie Sanders does not establish racial animus. As long as individuals were on the same managerial level as Saporito, she had no problem interacting with them, be they black or white. Plaintiff's problems arose when she no longer was on the

same level of authority and began being treated as a subordinate. However, the court cannot say that plaintiff's treatment at Saporito's hands as a subordinate was substantially different from the way other people under Saporito's managment were handled. They were all handled inappropriately but not because of their race or sex, simply because of Saporito's management style.

Furthermore, it would appear that there were legitimate criticisms made of plaintiff's work product and performance which were documented in the independent audits obtained by Saporito. Basically, Debose had skills in accounting, not management analysis. The latter required writing skills in which she was deficient. She failed to meet deadlines in completing work which has been documented, failed to report timely on occasion which the sign in/out log addressed and presented projects represented as finished which were felt to be deficient in grammar, if not content. Plaintiff was given training opportunities, which she felt were insufficient, but she was not denied training. As noted in the Government's post trial memorandum, plaintiff completed seven courses amounting to 376 hours of training while under Saporito's supervision.

The crux of plaintiff's case appears to be two-fold. She first alleges discrimination by Carolyn Saporito. But she also alleges conduct independent of Saporito which led to her downfall. Specifically, as noted in plaintiff's post trial memorandum, is the following:

> When Plaintiff was first transferred to Saporito, she knew of plaintiff's shortcomings according to Randy Florent, and so did the Agency.

> cording to Randy Florent, and so did the Agency. When Plaintiff was demoted, she could have been demoted within finance and accounting and Plaintiff could have continued to produce the quality work she had previously produced for 18 years. Instead, the Agency put her in an area where they knew she did not possess the skills.
>
> Additionally, the Agency knew of Saporito and her tactics long before Plaintiff was tansferred there but, they chose to place Plaintiff without the skills under someone who had the reputation for expecting her subordinates to do their own work. They didn't place Plaintiff under someone who had a reputation for training and working well with others. They placed her under someone who had a reputation for being intolerant and impatient. This was deliberate and calculated.

The court does not materially disagree with the aforementioned assessment of agency motivation. In fact, the court believes this is exactly what happened. Certainly, there were other areas where Debose could have been transferred. But it was not Saporito's decision to make this transfer. Nor is there any evidence of racial motivation on the part of those people who did make this reassignment. However, the end result was that Debose could not adequately perform the work expected of people in that job description. If plaintiff believes that she was "set up to fail", she may well be correct in this assumption. However, this is not protected under Title VII, even though it is hardly behavior which should be applauded or condoned.

Lastly, the court notes that Plaintiff's actual

termination came after Saporito's death and was effectuated by James Joy. According to Ken Kanik, James Joy contacted him telephonically and questioned him about Debose. At that time Kanik was of the opinion that Joy "plainly had to make a decision about her employment" and that he was "distraught" about being in that position. Kanik further testified that he believes the "front office wanted her [Debose] out". Indeed, Debose herself testified that "Jim Joy was pressured to fire her." It has never been identified who in the front office was exerting this pressure. The court notes that, since Saporito was deceased at the time of plaintiff's termination, any influence which she might have had over the situation had certainly be terminated.

The parties do not materially disagree on the law governing plaintiff's claims. Debose first claims a hostile work environment. In connection therewith, she must prove the following elements:

> (1) That she belongs to a protected group, i.e., that she is black; (2) that she was subjected to unwelcome racial harassment, i.e., verbal or physical conduct of a racial nature that is unwelcome in the sense that it is unsolicited or uninvited and is undesirable or offensive to the employee; (3) the harassment complained of was made upon race, i.e. that but for the fact of her race, the plaintiff would not have been the object of harassment; (4) the harassment complained of affected a "term, condition or privilege of employment", i.e., the racial harassment must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; (5) respondent superior, i.e., that the

employer knew or should have known of the harassment in question and failed to take prompt remedial action, *Jones v. Flagship International,* 793 F.2d, 714, 719 (5th Cir. 1986), *cert. denied,* 479 U.S. 107 S.Ct. 952, 93 L.Ed.2d 1001 (1987).

The court does not believe that Saporito used racially charged language in plaintiff's presence. The court completely discounts any testmony which indicates that racial epithets were used in Debose's presence. If they had been, the undersigned believes that this would have been alleged very early on and reiterated in plaintiff's letter to Congressman Jefferson. It was not.

While the court believes that the work environment was hostile in the sense that it was a tense, unpleasant place, the law likewise requires that any harassment must be severe and pervasive and because of prohibited animus before it becomes compensable. *Harris v. Forklift Systems, Inc., 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed. 2d 295 (1993); Meritor Savings Bank, FSB v. Vinson,* 477 U.S. 57, 106 S.Ct. 2399, 91 L.Ed. 2d 49 (1986). In other words, plaintiff must show that "but for" her race, she would not have been subject of harassment. *Henson v. City of Dundee,* 682 F. 2d 897 (11th Cir. 1982). The court does not believe this has been shown. Everyone in that branch was harassed by Saporito at one point or another. Furthermore, Valerie Sanders, a black female did not contend that she experienced racial harassment at Saporito's hands and the evidence does not so support. Title VII does not prohibit insensitivity, tastelessness, rudeness or authoritarian obnoxiousness.

Plaintiff contends that if her work were unsatisfactory,

it was because of the effect of the hostile and abusive work environment she was forced to be subjected to every day and that without that environment, she "could have performed like every other normal employee." That fact of the matter is that this is not established by the record. There is no work produced by other management analysts for purposes of comparison which indicates that theirs was of a similar caliber to plaintiff's and that they were not treated in the same fashion as she.

The court next addresses plaintiff's claim of disparate treatment in connection with her termination. The ultimate issue of motivation must be dealt with to answer the question of whether racial discrimination occurred. *Rhodes v. Guiberson Oil Tools,* 75 F. 3d 989 (5th Cir. 1996) (en banc).

Plaintiff has not established prohibited motivation in her termination sufficient to violate Title VII. The court cannot help but note that even plaintiff suspects that someone other than Saporito, i.e., the "front office", wanted her terminated, presumably because of the problem when she was the head of the finance and accounting brance. Saporito had passed away two months before plaintiff was ultimately let go. James Joy was the actual terminating official and there is no reason to suspect him of racial animus. Lastly, there were deficiencies in plaintiff's work which establish that she was not adequately performing in her job as a management analyst. For all of these reasons, the court is hard pressed to believe that Title Vii was violated even though the undersigned believes that Debose could have and should have been handled in a different fashion.

RECOMMENDATION

It is recommended that the claims of plaintiff, Judy Debose, against defendant, Togo D. West, Secretary of the Department of the Army, be dismissed with prejudice at her costs.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in a magistrate judge's report and recommendation within 10 days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court, provided that the party has been served with notice that such consequences will result from a failure to object. *Douglass v. United Services Auto. Assoc.*, 79 F.3d 1415 (5th Cir. 1956) (en banc).

New Orleans, Louisiana, this *23* day of *June,* 1997.

/s/ Alma L. Chasez

UNITED STATES MAGISTRATE JUDGE

APPENDIX E

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES DURING PRE-TRIAL DISCOVERY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JUDY M. DEBOSE	CIVIL ACTION
VERSUS	NO. 92-2774 C/W 94-0151
TOGO D. WEST, JR. SECRETARY DEPARMENT OF THE ARMY	SECTION "E" (5)

ANSWERS TO DEFENDANT'S INTERROGATORIES

In accordance with the Federal Rules of Civil Procedure, Plaintiff, through counsel, respectfully respond to the Defendant's Interrogatories and Request for Production of Documents as follows:

Interrogatories

1. (a) Dr. Doris LeBlanc
8211 Apricot St.
New Orleans, LA 70118
(504) 861-8529

Treatment for depression and the effects from discrimination, retaliation harassment, hostile work environment (hereinafter referred to as discrimination/retaliation) and the firing from my job.

(b) Mohammed Suleman, M.D.
4770 S. I-10 Service Road, West
Metairie, Louisiana
(504) 456-7468

Surgery on gall bladder after having a big argument with Carolyn Saporito on May 11, 1992 and having a gall bladder attack.

(c) Toni Spears
6600 Plaza Drive, Suite 210
New Orleans, Louisiana 70127
(504) 246-4541

She is a therapist. She treated her for the effects that the discrimination/retaliation had on me, i.e. self esteem, etc.

(d) Eye Surgery Center of Louisiana
5640 Read Blvd. Suite 900
New Orleans, Louisiana 70127
(504) 246-2136
Treatment for eye problems and surgery.

(e) Dr. Cory L. Cashman
5646 Read Blvd.
New Orleans, Louisiana 70127
(504) 242-5357

Treatment for diabetes and thyroid problem.

(f) Heritage Beverly Hills
P.O. Box 640550
Beverly, Florida 34464-0550
(904) 746-9000
Patient No. A/D 120-1/0159.1

Treatment for food addiction, depression related to discrimination/retaliation.

(g) Lions/LSU Eye Center, 2020 Gravier Street, New Orleans, LA 70112, (504) 568-6700. Treatment of eye problems.

(h) Charity Hospital/Medical Center of Louisiana, 1532 Tulane Avenue, New Orleans, LA 70140. Various tests.

2. (a) Her yelling and screaming at me.

(b) Telling me about Blacks constantly.

(c) Telling me I am just as lazy and dumb as all the other Blacks.

(d) Purposely giving me the wrong information when I was doing an assignment.

(e) Telling me constantly that she was going to fire me.

(f) Telling me that she was a master at psychological warfare and she was going to mess my mind up.

(g) Making fun of Blacks on how they dress and talk.

(h) Constantly attacking other employees in my presence.

(i) Telling me that I was stuck in her office and she would never give me a good referral to anyone for me to get out of her office.

(j) Constantly and openly talking in the office about how she supported David Duke and what he was going to do to Blacks if he would win his election.

(k) Telling me that no one will believe me over her because she was White and I was Black.

(l) After I purchased a new car, her telling me I will be fired before I could finish paying for the car.

(m) Upon medical advice, I expressed to her how it made me feel when she yelled and screamed at me. And she responded with, "shut up and go sit down."

(n) After telling her that the things she was doing was causing me to feel stressful, she responded, "You should take a course in how to manage stress," then she went out of her office and told another employee, loud enough for me to hear, her that "I had just told her that the things she was doing were causing me stress and how she knew that she was getting to me and that she was going to do me more (and started laughing).

(o) Always talking about Blacks on welfare. Referring to someone as a "nigger" when she knew I could hear her.

(p) Requiring everyone in the office to sign in and out and, then later finding out that when I was gone for five (5) weeks and found out on my return that no one was required to sign in and out the entire time I was out.

(q) Giving me two performance ratings at the same time: one with a satisfactory rating and one with an unsatisfactory rating, and asking me to sign *both*.

3. (a) Giving me a performance rating in March 1992 with a rating of "fully successful" after I turned in the

studies, then giving me a PIP in September 1992 on the same studies I had been rated on in March 1992.

(b) After verbally agreeing to give me an extension at the end of the PIP period to complete the studies because she knew I had surgery on both of my eyes, and then waiting until the PIP period was over to deny the extension in writing.

(c) The Agency never trying to accommodate me when they knew of my medical conditions (handicap).

(d) The Agency not allowing me to take part in their Employee Assistance Program when I reported my emotional problems.

(e) Not giving me the same training as other Management Analysts.

(f) When acting as Comptroller, signing my performance plan in two places, but according to the regulations she was supposed to sign only once and obtain the signature of higher rank for approval of the plan.

(g) Not giving a description in the PIP's of types of improvement that I needed to demonstrate to obtain fully successful level, as required by regulation.

(h) Failing to provide in any of the PIPs: (1) the assistance to be provided during the period; (2) what was required for performance to improve and to be sustained at the MET level; (3) stating what improvement was necessary for me to retain my position (all are required by regulation).

(j) Failing to provide an objective performance plan which would permit an accurate evaluation of my job performance, as required by regulation.

4. (a) Preventing me from talking to anyone else in the office.

(b) The EEO Manager sending out a summary report to managers listing the names of persons who had put in EEO complaints, and when advised to stop, she stated she was going to continue.

(c) The Agency telling me my three EEO complaints were moot because I no longer work there.

(d) Telling me constantly that she was going to get me for putting in EEO complaints.

(e) Telling me that she was going to move my desk because she saw me talking to another Black employee. She said we may be plotting against her.

(f) Telling me, after Ken Kanik left New Orleans to go to Japan, that I could put in all the EEO complaints I wanted because I will never win any because she could get Jean Vallon and Vince Salito to back her up in anything she said or told them to say to win the case against me. She told me "your ass is grass and I am the lawnmower."

(g) The Agency not making accommodations for me after they were informed of my diabetes.

(h) The Agency not letting me participate in the EAP.

(i) The Agency not allowing me to use eight hours of company time to process my EEO claim, as permitted by regulation.

(j) Telling me I would be fired before I win any of my EEO cases.

(k) Telling me I should not be airing out our office dirty laundry to the people in the EEO office.

(l) Telling me I should go ahead and resign because she had everyone on her side and they were all White and no one would believe me because I was Black.

5. (a) Giving me a letter of warning about telephone usage when I was, in fact, following her guidelines.

(b) Yelling and screaming at me constantly.

(c) Saying demeaning things to me out loud in the office.

(d) Telling people in the office things about me.

(e) Constantly telling me she was going to fire me.

(f) Constantly telling me I was dumb and stupid.

(g) Giving me wrong or bad information on assignments.

APPENDIX F

EXCERPTS FROM PLAINTIFF'S DEPOSITION TAKEN ON MAY 2, 1996 ON PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES

RACIAL ANIMUS

Deposition of Judy M. DeBose page 43, Lines 18 - 23

And I remember when I was branch chief with her, when we would go to staff meetings, that was either the comptroller, Timothy Haider or Bob Worral. I'm not sure which one, they would talk to her about having blacks in her section because she always had white employees. And she always said she didn't want any.

Deposition of Judy M. DeBose Page 44, Lines 2 -3

Yeah. She [Saporito] didn't give a reason. She just said she didn't want black employees working there.

Deposition of Judy M. DeBose Page 48. Lines 1 -16

[Saporito] betrayed all these other white males, and females, too, the same, on what basis do you find, or can you contend, that the very same treatment you received was based on your being black, and not just being another human being in her section?

A. Well, I'm basing it on being black because she talked about blacks a lot, on how they dress. She would comment about the way they spoke.

She would have open conversations about how she backed David Duke, and she believed in his philosophy about putting blacks in their places and getting them off of welfare and getting a job.

And some of the treatment — well, she would tell me that when we went to the USACARRA hearing that they would not believe me because I was black and she was white, so that's why I felt like it was because of my race.

Deposition of Judy M. DeBose Page 49 Lines 2 - 25

A. So maybe it was say June, '92. Carolyn and I used to work until 5:30, and Vince used to get off at 3. By this time, Ken had gone to Japan.

Q. Just you two little chickens.

A. Yeah. So Carolyn was in her office, and I think I heard her go out to the door. And then the clean-up man, who was a conract clean-up person, came — and he was a black male — came in to empty the trash and vacuum, or whatever they do. And he emptied her trash and emptied my trash, and I don't know if he left or what.

She [Saporito] came in, and she was in her office for a few minutes, and she came to my desk and said, Did you see anybody in my office?

And I said, No. I said, The only person I saw in there was the clean-up man. And she said — I said, Why? And she said, Someone stole some money out of my wallet. She said, I had a ten and a 20 this morning, and I broke — I don't which one she broke, but she had that change, but she didn't have that other ten or 20.

And I said, Well, I didn't see anybody go near your purse. I saw — I heard him emptying your trash. And she said, Well, somebody stole money out of my purse.

So she went over to finance and accounting, and I think she told them, and she came back and she was ranting and raving about —[1]

Deposition of Judy M. DeBose page 50, Lines 19 - 25

A. So Carolyn came back, and she was ranting and raving. And she called somebody on the telephone, and she was ranting and raving about her money. And then I heard her say, that nigger stole my money. Well, she told me to my face she thought it was the clean-up man.

So the next day I told Vince, I said Carolyn told me something about the clean-up man stole her money yesterday.

Deposition of Judy M. DeBose page 51, Lines 1 - 5

Q. Uh-huh (Indicating an affirmative respones).

A. He laughed. He said, The clean-up man? And I think he told me she thought it was me.

So the answer is I'm thinking she's talking about the clean-up man, and he's telling me she's talking about me.

Deposition of Judy M. Debose Page 102, Lines 2 - 25

THE WITNESS. Okay. She [Saporito] would com-

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[1] Testimony concludes on Page 50, Line 1

ment about the way they walk. When she would comment about their clothes, this person, Brenda Webber, who was black, she would comment that she was overdressed for the office.

BY MR. SCHREIBER

Q. How so? You mean overdressed, like to fancy?

A. Yeah.

Q. And was she?

A. Not to my knowledge.

Q. Well, what did she wear?

A. She wore a suit, or she wore regular clothes. To my knowledge, it was regular clothes. But she would make fun of it saying it was not.

Q. Well, what did Carolyn Saporito wear to the office?

A. Same stuff. So that's what I'm saying. Why was she commenting about blacks wearing the same things she wore?

Q. Okay. She didn't talk about white people, what they wore?

A. I never heard her make any comment about white people.

Q. Okay. What about how do black people walk? I didn't know they walk differently. How would she claim they walk differently?

A. Well, this person, Brenda Webber —

Q. Same person, Brenda.

Deposition of Judy M. DeBose Page 103, Lines 1-17

A. Well, that's the one that comes to my mind, Brenda Webber. Brenda had a way of walking that was — I thought it was very sophisticated and nice, but she would —

MS. DEBOSE-PARENT: She, who?

THE WITNESS. Carolyn Saporito would say that she didn't think it was good, or she thought it was too suggestive.

BY MR. SCHREIBER:

Q. How did she walk? Can you describe it in words?

A. No. She walked — when she walked, she put both feet in front of her, like everybody else.

Q. No, you just told me she walked differently. You said she walked sophisticated.

A. Sophisticated. She walked straight up, you know, like she had alot of self esteem.

Q. Uh-huh (Indicating an affirmative response)

A. You know, something like that. And I didn't see anything wrong with it, but she would make fun of it all the time.

Deposition of Judy M. DeBose Page 104, Lines 3 -15

Q. Okay. "Telling me constantly she was going to fire me.' How — she told you from January, 1990, forward that she was going to fire you? I thought you told me that she was your friend there in the beginning.

A. In 1990, yeah.

Q. All right. So when did this start?

A. In May 1st — during the month of May of 1991 —

Q. Okay.

A. — I had purchased a Merceded-Benz. It was a used car, but to me it was a new car. And I don't know how she found out I had it. She might have seen me driving it.

And she came over to my desk and she told me that, You will be fired before you pay for it.

Deposition of Judy M. DeBose Page 104, Lines 24 - 25 & Page 106, Lines 1 - 9

Q. But you are telling me that out of the clear blue sky she [Saporito] walked up to you and, without anything having happened to you in terms of a — I mean other than the performance appraisal, where she had given you the official one and the unofficial one, without anything else having — no PIPs, no counselings, no warnings in writing no — you know, you're having difficulties with your, you know, this, that, or the other aspect of your job, out of the clear blue sky she just walks up and says, you aren't going to be around here long enough to pay for it?

A. That's what she told me.

Deposition of Judy M. DeBose Page 111, Lines 10 - 16

A. Right, okay. I think I addressed that earlier when I explained that this week she may be harassing Vince and me —

Q. Oh, okay. Uh-huh (Indicating an affirmative response)

A. — the next week she harassed Ken and me, the next week she might harass me. Then she might go back to Vince and me. But it was always me, but she would change up on Vince and Ken, or whoever.

Deposition of Judy M. DeBose Page 111, Linew 21 - 25

Q. Oh, okay. "constantly and openly talking in the office about how she supported David Duke and what he was going to do to blacks if he would win his election." She did this to you or in front of you?

A. In front of me.

Deposition of Judy M. DeBose Page 112, Lines 1 - 21

Q. All right. Who is she [Saporito] talking to about this?

A. On one occasion I think she was talking to Jean Vallon. And sometimes she would just come out of her office and say, Did anybody see David Duke on television last night? He's running for whatever office. And, Did you hear when he said such and such?

But she would make connotations of what he said in reference to blacks. You know, whatever he might have said. He's going to get blacks off welfare, or he's going to get them working, because they're lazy. Whatever —whatever he said the night before, or if she read it in the paper, she would just talk openly about it in the office.

Q. So others would have heard this? Like?

A. Whoever was sitting at their desks. But I think one time she talked to Jean Vallon about it.

Q. All right. So Vince, if he was at his desk —

A. Could have heard her?

Q. —Could have heard her?

A. Could have heard her.

Q. And by your account, these other —

A. Could have been Valerie, could have been Darryl.

Deposition of Judy M. DeBose page 115, Lines 19 -25

Q. Okay. And always said — "Always talking about blacks on welfare, referring to someone as "nigger" when she knew I could hear her" Is this this —

A. Yeah, right.

Q. This "nigger" thing was the thing we talked about before, where it was actually you, but roundaboutly, due to the stolen money?